

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Wade Stephney Jr.,)
Plaintiff,) C.A. No. 4:08-3449-MBS
vs.)
Michael J. Astrue, Commissioner of Social)
Security,)
Defendant.)

ORDER AND OPINION

On October 8, 2008, Plaintiff Wade Stephney Jr., appearing *pro se*, filed the within action pursuant to 42 U.S.C. §§ 408, 1982, and 1983 alleging that the Social Security Administration (SSA) improperly suspended his Social Security retirement insurance benefits (RIB) and Supplemental Security Income (SSI) payments. On January 20, 2009, Defendant Commissioner of Social Security (the “Commissioner”) filed a counterclaim seeking the reimbursement of overpayments of benefits made to Plaintiff. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bruce Howe Hendricks for pretrial handling. On November 4, 2009, the Magistrate Judge filed a Report and Recommendation recommending that a motion to dismiss the complaint filed by the Commissioner be granted. On February 3, 2010, the court entered an order dismissing Plaintiff’s complaint and recommitting the matter to the Magistrate Judge for further proceedings regarding the Commissioner’s counterclaim.

This matter is before the court on the Commissioner’s motion to voluntarily dismiss its counterclaim without prejudice, which was filed on June 1, 2010. On June 8, 2010, Plaintiff responded to the Commissioner’s motion to dismiss. On July 22, 2010, the Magistrate Judge

issued a report and recommendation recommending that the Commissioner's motion be granted.

On August 4, 2010, Plaintiff filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight and the responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination on any portions of the Report and Recommendation to which a specific objection is made. *Id.* The district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge. 28 U.S.C. § 636(b)(1).

Defendant objects to the Magistrate Judge's recommendation contending that "the Social Security Adim [sic] terminated & suspended the pro se Plaintiff's RIB & SSI benefits in violations [sic] of 42 U.S.C. [§§] 1983, 1984, 42 U.S.C. [§] 402 & 42 U.S.C. [§] 408. Suspension before conviction." Entry 57 at 1. Plaintiff further contends that "the Social Security had received an erroneous [sic] Report & Information that the pro se Plaintiff had an outstanding felony warrants & probation vio detainer." Entry 57 at 1. These objections appear to be directed at the merits of Plaintiff's dismissed complaint. As such, they do not direct the court to a specific error in the Magistrate Judge's Report and Recommendation. *Orpiano*, 687 F.2d at 47-48. Nevertheless, the court has conducted a *de novo* review of the issues in this case and concludes that the Magistrate Judge has properly applied the applicable law. *See* Fed. R. Civ. P. 41(a)(2) (governing voluntary dismissals by court order).

CONCLUSION

Based upon the foregoing, the court adopts and incorporates herein by reference the Report and Recommendation of the Magistrate Judge. The court **grants** the Commissioner's motion to dismiss (Entry 54), and the Commissioner's counterclaim is dismissed without prejudice.

IT IS SO ORDERED.

s/ Margaret B. Seymour
The Honorable Margaret B. Seymour
United States District Judge

August 16, 2010
Columbia, South Carolina